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No. 03-1419

Supreme Court, U.S.
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In The
Supreme Court of the United States

MICHAEL FITZGERALD,
Treasurer, State of Iowa,

Petitioner,

v.

RACING ASSOCIATION OF CENTRAL IOWA,
IOWA GREYHOUND ASSOCIATION,
DUBUQUE RACING ASSOCIATION, LTD., and
IOWA WEST RACING ASSOCIATION,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of Iowa

REPLY BRIEF

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INTRODUCTION

The dispute between the parties in this Petition for Certiorari boils down to whether a state court may *reapply* the *federal* equal protection principles previously decided by the United States Supreme Court *in the same case* to reach a contrary conclusion without violating the federal mandate to conduct "further proceedings not inconsistent with" this Court's opinion.

ARGUMENT

The Iowa Supreme Court, which has twice decided to forego formulating a different state equal protection analysis, cannot use the Iowa Constitution as a platform to reverse application of federal equal protection principles previously decided by this Court in the same case. The racetracks skew important principles upholding the exclusive authority of a state court to decide issues under its state constitution. The general authority of a state court to interpret its state constitution is not in issue. The Petition for Certiorari challenges the specific authority of the Iowa Supreme Court to expressly reject application of principles of federal constitutional law that have been decided by the United States Supreme Court in this case.

This Petition for Certiorari does not challenge the authority of the Iowa Supreme Court on remand to strike down the tax statute under a state constitutional analysis, although to do so would have forced the Iowa court to "eat their words" on the congruity of state and federal equal protection law. *Fitzgerald v. Racing Ass'n of Cent. Iowa, et al.*, 539 U.S. 103 (2003) (Transcript of oral argument at 46.) But the Petition does challenge the authority of the

Iowa Supreme Court on remand to violate this Court's mandate by rejecting the rational basis expressly found by this Court to support the state tax statute as a matter of *federal* constitutional law.

The racetracks concede that the failure of the Iowa court to declare an adequate and independent state ground for its initial decision in *Racing Ass'n of Cent. Iowa, et al. v. Fitzgerald*, 648 N.W.2d 555 (Iowa 2002), had the "unfortunate . . . effect" of making this Court's decision in *Fitzgerald v. Racing Ass'n of Cent. Iowa, et al.*, 539 U.S. 103 (2003), "merely advisory." (Respondents' Brief in Opposition at 4.) The implications of this state court maneuver transcend concerns about advisory opinions and raise serious conflicts with federal jurisdiction. If the Iowa court can forego establishing an adequate and independent state law ground in its initial decisions – and after reversal by this Court adhere to the same outcome under the authority of the state constitution by simply "reapplying" federal equal protection principles in the same case – no decision by this Court could bind the Iowa court on issues of federal equal protection law. Litigants who prevail in this Court on federal equal protection claims will have the constitutional rug pulled out from under their federal victory.

The Iowa Supreme Court cannot – in keeping with this Court's mandate[1] – apply the same federal principles

[1] The obligation of state courts to follow the mandate of this Court is neither novel nor "remarkable." (Respondents' Brief in Opposition at 5, fn.2.) Almost 130 years ago in *Tyler v. Magwire*, 84 U.S. 253 (1872), this Court announced that "[s]tate courts have no power to deny the jurisdiction of this court in a case brought here for decision and sent back with the mandate of the court, which is its judgment." *Id.* at 284. Further, a second remand to a state court entrenched in a contrary position is not required when from

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in the same case under the same record but, nevertheless, find a unanimous United States Supreme Court decision to be irrational. A summary reversal in this case poses no threat to the authority of state courts to interpret their state constitutions. Rather, a summary reversal would uphold this Court's mandate in this case, preserve this Court's decision on application of federal principles and restore the appropriate balance between federal and state courts.

> the proceedings of the State court under the former mandate, and the reasons assigned by the court for their judicial action in the case, it seems to be quite clear that it would be useless to remand the cause a second time, as the court has virtually decided that they cannot, in their view of the law, carry into effect the directions of this court as given in the mandate.

Id. at 289-90.

CONCLUSION

For all of the foregoing reasons, the Petition for Certiorari should be granted and the decision of the Iowa Supreme Court should be summarily reversed by the United States Supreme Court with no further remand.

Respectfully submitted,

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